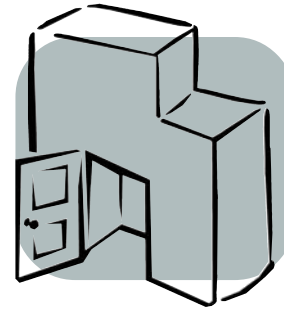




Business Activity and Nexus in Utah

Utah State Tax Commission

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If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or TDD (801) 297-2020. Please allow three working days for a response.

Purpose

The purpose of this publication is to define nexus and provide general guidelines for determining whether a business entity's activities create nexus with the state of Utah.

Definitions

Nexus means a business entity has established a direct or representational presence within a particular state or jurisdiction. This presence gives the state the right to require a taxpayer to pay or collect and remit certain taxes.

The standards for determining whether nexus has been established for sales tax and corporate franchise or income tax purposes are different and distinct. These standards must be applied to determine whether a jurisdiction has the authority to impose the particular tax involved. Following are brief descriptions of the business activity that must be present before a taxpayer is required to pay or collect and remit sales and use tax to the state, or pay corporation franchise or income tax.

Sales Tax

The United States Constitution requires that there be a sufficient nexus between Utah and a business in order for Utah to compel that business to pay or collect and remit sales tax.

The following is a general guideline of activities that, if engaged in, will exceed the minimum threshold of nexus and subject the business to the sales and use tax requirements of Utah.

Utah law defines a retailer as any person regularly engaged in systematic solicitation of a consumer market in this state. A retailer includes commission merchants, auctioneers, salesmen, representatives, distributors, supervisors and employers. Retailers shall pay or collect and remit sales and use tax if they:

1. Have or utilize an office, distribution house, sales house, warehouse, service enterprise or other place of business;
2. Maintain a stock of goods in Utah;

3. Regularly solicit orders, whether or not those orders are accepted in this state, unless the activity in this state consists solely of advertising or solicitation by direct mail, electronic mail, the Internet, telephone or other similar means;
4. Regularly engage in the delivery of property in this state other than by common carrier or U.S. mail; or
5. Regularly engage in any activity in connection with the leasing or servicing of property located in Utah.

These items are examples only. They should not be considered exhaustive or all-inclusive.

Corporate Tax

Public Law 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property. Only the solicitation to sell tangible personal property is afforded immunity under P.L. 86-272.

For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors. "De minimis" means those activities that, when taken together, establish only a trivial connection with the taxing state.

Utah Administrative Rule R865-6F-6 lists the following activities that, if engaged in, will establish nexus in the state:

1. Making repairs or providing maintenance or service to the property sold or to be sold;
2. Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
3. Investigating credit worthiness;
4. Installing or supervising installation at or after shipment or delivery;
5. Conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. Providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes goes beyond the solicitation of orders;
7. Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints, when the sole purpose is to ingratiate the sales personnel with the customer;
8. Approving or accepting orders;
9. Repossessing property;
10. Securing deposits on sales;
11. Picking up or replacing damaged or returned property;
12. Hiring, training, or supervising personnel, other than personnel involved only in solicitation;
13. Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
14. Maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;
15. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
16. Owning, leasing, using, or maintaining any of the following facilities or property in-state:
 - (a) repair shop;
 - (b) parts department;
 - (c) any kind of office other than an in-home office;
 - (d) warehouse;
 - (e) meeting place for directors, officers, or employees;
 - (f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;
 - (g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;
 - (h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;
 - (i) real property or fixtures to real property of any kind;
17. Consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;
18. Maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;
 - (a) the maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself, cause the loss of protection under this rule.
 - (b) for purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.
19. Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchise or licensor to its franchisee or licensee within the state;
20. Shipping or delivering goods into this state by means of private vehicle, rail, water, air or other carrier, regardless of whether a shipment or delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;
21. Conducting any activity which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

If you have specific questions about business activity or nexus that are not answered above, please contact the Tax Commission at the address listed at the end of this publication.

If you would like to submit an offer for settlement of back taxes, address the following issues, **in writing**, to the Auditing Division, Voluntary Disclosure Program.

1. A description of the company's activities, to include the following:
 - (a) number of years doing business in Utah,
 - (b) a list of the type of property owned and/or leased in Utah,
 - (c) description of equipment leased for use in Utah,
 - (d) number and length of time representatives acting in your behalf or employees have been in Utah, and
 - (e) how Utah business is solicited;
2. The type of tax being offered and a statement as to why the company is not offering other tax types;
3. A declaration of estimated tax liability for the disclosure period, by tax type;
4. A declaration of the estimated tax liability for periods prior to the disclosure period, by tax type;
5. Disclosure as to whether the company has collected or withheld tax;
6. A statement indicating whether the Utah State Tax Commission or the Multistate Tax Commission has contacted the company, and the nature of the contacts; and
7. The voluntary disclosure agreement terms proposed by the company.

For more information regarding the Voluntary Disclosure Program, refer to Pub 4, or visit the Tax Commission website at tax.utah.gov.